

Attorney Docket No.: F3311(C)
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BRIEF FOR APPELLANT

Sir:

This is a Brief on Appellants' Appeal from the Examiner's Final Rejection concerning the above-identified application.

The Commissioner is hereby authorized to charge any additional fees, which may be required to our Deposit Account No. 12-1155, including all required fees under: 37 C.F.R. §1.16; 37 C.F.R. §1.17; 37 C.F.R. §1.18; 37 C.F.R. §1.136.

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I. REAL PARTY IN INTEREST

The Real Party in Interest in this Appeal when filed was Unilever Bestfoods, a corporation of the State of New York. The Real Party in interest is now Conopco, Inc., d/b/a Unilever, a corporation of the State of New York.

II. RELATED APPEALS AND INTERFERENCES

Neither the Appellants, their legal representatives nor the Assignee are aware of any other Appeals or Interferences relating to the present Appeal.

III. STATUS OF CLAIMS

This Appeal is taken from the Final Rejection of claims 1 through 9, the pending claims in the application. A copy of the appealed claims is attached to this Brief as an Appendix.

IV. STATUS OF AMENDMENTS

No Amendment after the Final Rejection was filed in this application. In fact, no Final Rejection was ever mailed to Appellants and Appellants were not expecting an Advisory Action after receiving a second Non-Final Office Action.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention set forth in the claims on appeal is directed to a method for fabricating leaf tea product by mixing leaf tea with tea solids derived from tea powders such that the resulting mixture is wetted and dried. The resulting product can be used to prepare a superior tea beverage, and particularly, one having the physico-chemical properties desired by a customer and/or consumer.

By the presently claimed invention, therefore, a superior method for fabricating a leaf tea product is described. Support for independent claim 1 may be found, for example, on page 5 of the specification, lines 9-11. Support for dependent claims 2-9 may be found, among other places, on pages 6-8 of the specification as originally filed. As may be readily gleaned from, for example, Examples 1-4 in the

specification, the claimed method resulted in a consumable beverage that unexpectedly displayed excellent taste, color and mouthfeel characteristics and the beverage precursor produced infused significantly faster and to a greater extent than commercially available products.

In the Specification, the portion from pages 1 to page 2, line 16 is background. The phraseology used in claim 1, again, may be found, among other places, on page 5 of the specification. Support for the dependent claims, again, may be found on pages 6-8 of the specification as originally filed. Beginning at page 8, line 20 to page 12, working examples (including comparative examples) illustrate the unexpected and superior results obtained when making beverages from a precursor obtained from the method as now claimed herein.

VI. GROUNDS OF THE REJECTION TO BE REVIEWED ON APPEAL

The issues raised in this appeal are primarily ones of fact and of the type normally encountered in connection with rejections made under 35 USC § 102(b) and 35 USC § 103. In particular, the issue is as follows:

I. Would one of ordinary skill in the art, upon reading U.S. Patent No. 4,534,983 ('983), find the method of claim 1 (directed to a method for preparing a leaf tea product) as further defined by claims 3 and 9 lacking novelty in view of the '983 reference;

II. Would one of ordinary skill in the art, upon reading EPO 910956 A1 ('956), find the method of claim 1 as further defined by dependent claims 2-4 and 9 lacking novelty in view of the '956 reference;

III. Would one of ordinary skill in the art, upon reading U.S. Patent No. 4,534,983, GB 2,239,305 and U.S. Patent No. 6,056,949, find that claims 4-8 as they further define claim 1 are obvious under 35 USC §103?

VII. ARGUMENT

I. Rejection Under 35 USC § 102(b)

The Examiner has maintained the rejection of claims 1 and 3, and 9 under 35 USC § 102(b) as being anticipated by Koene et al., U.S. Patent No. 4,534,983 (hereinafter, '983). In the rejection (as it relates to claims 1 and 3), the Examiner refers to the Office Action mailed 17 January 2006. Such Office Action suggests, in summary and as already made of record, that the '983 reference teaches a process for flavoring tea in which dry tea leaves (vegetable material) and micro-encapsulated flavor (tea solids) are mixed together and later sprayed with a water-based low viscosity adhesive solution and thoroughly mixed. The Examiner continues to believe that the '983 reference shows the steps of claims 1 and 3. As to claim 9, the Examiner believes that the claim lacks novelty in view of the '983 reference whereby the Examiner mentions, in summary, that it is known that teas give some infusion in a few seconds and given the teachings in the '983 reference one would expect similar infusion properties by the products described therein. In view of the above, the Examiner believes that the novelty rejection of record is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Appellants' position, again, that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As set forth in independent claim 1 of the present invention, a method is described for preparing a fabricated leaf tea product comprising mixing leaf tea with tea solids derived from tea powders, the method being characterized in that the mixture of tea leaves and tea powder is simultaneously wetted and dried.

The invention of claim 1 is further defined by the dependent claims, which claim, among other things, that the fabricated leaf tea product is dried to about 3 to about 8% moisture and that the fabricated leaf tea product gives an infusion under 10-15 seconds with water at a temperature between 80 and 90°C (new claim 9).

In contrast, and as already made of record, the '983 reference merely describes a process for flavoring dry vegetable matter. The process of the '983 reference requires mixing dry pieces of vegetable leaf and stem and mixing the same with one or more microencapsulated flavors. The mixture is simultaneously or subsequently sprayed with an organic solvent that can be ethanol, isopropanol, propylene glycol, glycerol and benzyl alcohol, followed by the addition of an aqueous adhesive solution. The '983 reference does not, even remotely, teach, suggest, or disclose mixing tea leaves and tea powder and simultaneously wetting and drying the resulting mixture. Again, as set forth in the specification of the present application at page 4, tea powder is defined to mean a product prepared by extracting tea material into water from tea leaves and then subsequently concentrating and drying the infusion to give a powder. Therefore, it is clear that tea powder as defined by the Appellants, cannot, even remotely, be considered to be micro-encapsulated flavors as asserted by the Examiner.

Turning to claim 9, the claim further defines the method of claim 1 as one where the fabricated leaf tea product gives an infusion under 10 to 15 seconds with water at a temperature between 80 and 90°C. The invention of claim 9, which depends from claim 1, is novel over the '983 reference since, again, nothing in the '983 reference relates to a tea powder. Microencapsulated flavor as used in the '983 reference is not tea powder. Moreover, the mixing of leaf (even tea leaf) with microencapsulated flavor, followed by spraying the resulting mixture with organic solvent, adding adhesive and mixing until all liquids are absorbed does not in anyway suggest the presently claimed invention.

In view of the above, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single reference, namely the '983 reference. Therefore, Appellants respectfully submit that the novelty rejection is improper and must be withdrawn and rendered moot.

II. Rejection Under 35 USC § 102(b)

The Examiner has rejected claims 1-4 and 9 under 35 USC § 102(b) as being anticipated by Carns et al., EP 0 910 956 A1 (hereinafter '956).

In the rejection, the Examiner maintains the rationale set forth in the 17 January 2006 Office Action. In summary, such Office Action suggested that the '956 reference discloses a tea bag with a tea mixture of tea leaves and tea solids. The Examiner noted that the presently claimed invention is directed to a process that simultaneously wets and dries a mixture of tea leaf and tea powder. Nevertheless, the Examiner maintains that the claimed invention describes tea

leaves and tea solids that are simultaneously wet at some point and dried together and that this is taught by the '956 reference where tea concentrate is sprayed onto tea leaves and dried. The Examiner further maintains that the limitations of claim 2, 3 and 4 are also taught in the '956 reference. Regarding claim 9, the Examiner mentions that the '956 reference describes tea infusion with bags in 22°C water and in less than 90 seconds whereby the Examiner concludes that it is known that tea will infuse faster in hot water. Therefore, the Examiner believes that the novelty rejection to claims 1-4 and 9 is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Appellants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a superior method for preparing fabricated tea leaf product by mixing tea leaves and tea powder and wetting and drying the resulting mixture simultaneously.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, the amount of tea powder employed, the amount of moisture present within the fabricated leaf tea product, that wetting and drying are performed in a fluidized bed and that the resulting fabricated leaf tea product gives an infusion under 10-15 seconds with water at a temperature between 80 and 90°C.

In contrast and as already made of record, the '956 reference is merely directed to a tea bag for iced tea beverages. The '956 reference does not, even remotely, describe a process where tea leaves and tea powder are

simultaneously wetted and dried. The '956 reference is merely directed to spraying tea concentrate onto tea leaves. No mixture of tea leaf and tea powder is made whereby the same is simultaneously wetted and dried as claimed in the present invention. In fact, the '956 reference suggests spraying tea concentrate onto tea leaves either simultaneously or in separate steps. No wetting step and no drying step are simultaneously required or suggested. In view of this, it is clear that all the important and critical limitations set forth in the presently claimed invention are not found in a single reference, namely the '956 reference. Therefore, the rejection made under 35 USC § 102(b) should be withdrawn and rendered moot.

III. Rejection Under 35 USC § 103

The Examiner has, again, rejected claims 4-8 under 35 USC § 103 as being unpatentable over Koene et al., U.S. Patent No. 4,534,983 (hereinafter '983) as applied to claims 1 and 3 and further in view of Hampton et al., GB 2 239 305 (hereinafter '305) and further in view of Menzi et al., U.S. Patent No. 6,056,949 (hereinafter '949).

In the rejection, the Examiner mentions, that claim 4 is now included in the rejection and this should have been clear from the previous Office Action. Additionally, the Examiner appears to be relying on the rejection made in the 17 January 2006 Office Action.

Notwithstanding the Examiner's apparent position to the contrary, it is the Appellants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, independent claim 1 is directed to a method for making a fabricated leaf tea product by mixing tea leaves and tea powder such that the resulting mixture is simultaneously wetted and dried. For the reasons mentioned above, it is clear that such important limitations are not, even remotely found in the '983 reference. The invention of independent claim 1 is further defined by the dependent claims which claim, among other things, the employment of a fluidized, the temperature within the fluidized bed used in the superior method defined in claim 1, and that the fabricated leaf tea product gives an infusion under 10-15 seconds with water at a temperature within 80-90°C.

In contrast, and again, mixing tea leaves and tea powder and simultaneously wetting and drying the same after a mixture has been made is not even remotely taught in the '983 reference. The '949 reference does not cure any of the vast deficiencies of the '983 reference since the '949 reference is merely directed to a process for producing spherical or substantially spherical granulated materials that are free flowing. Moreover, and for completeness of the record, the '305 reference is only directed to drying tea leaf that has been fermented by employing a fluidized bed.

Since all the important and critical limitations set forth in presently claimed invention are not found in the combination of references relied on by the Examiner, an obviousness rejection consistent with 35 USC §103 has not been presented. Therefore, Appellants respectfully request that the rejection made under 35 USC §103 be withdrawn and rendered moot.

VIII. CONCLUSION

Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's final rejection of claims 1-9 under 35 U.S.C. 103.

Respectfully submitted,



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IX. CLAIMS APPENDIX

1. A method for preparing a fabricated leaf tea product comprising mixing leaf tea with tea solids derived from tea powders, the method being characterised in that the mixture of tea leaves and tea powder is simultaneously wetted and dried.
2. The method according to claim 1 wherein the amount of tea powder mixed with the leaf tea is between about 10 and about 75% of the weight of the leaf tea.
3. The method according to claim 1 wherein the fabricated leaf tea product is dried to about 3 to about 8% moisture.
4. The method according to claim 1 wherein the mixing of the leaf tea and the tea powder and the simultaneous wetting and drying are performed in a fluidised bed
5. The method according to claim 4 wherein the mixture of leaf tea and tea powder is wetted by spraying hot water on to the fluidised bed.
6. The method according to claim 5 wherein the hot water is at a temperature in the range about 30 to about 60°C.
7. The method as claimed in claim 5 wherein the temperature of the fluidised bed is in the range about 35 to about 50°C.
8. The method as claimed in claim 7 wherein the temperature of the fluidised bed is about 35°C.

9. The method as claimed in claim 1 wherein the fabricated leaf tea product give an infusion under 10 to 15 seconds with water at a temperature between 80 and 90°C.

X. EVIDENCE APPENDIX

No evidence pursuant to §§ 1.130, 1.131 and/or 1.132 is submitted herewith.

XI. RELATED PROCEEDINGS APPENDIX

No decisions rendered by a Court or the Board have been made; therefore, no such decisions are submitted herewith.